

103^D CONGRESS
1ST SESSION

H. R. 1817

To protect private individuals against reprisals for disclosing information
regarding certain governmental actions.

IN THE HOUSE OF REPRESENTATIVES

APRIL 22, 1993

Mr. DELAY (for himself, Mr. BARTLETT OF MARYLAND, Mr. EWING, Mr. GREENWOOD, Mr. HANCOCK, Mr. ISTOOK, and Mr. STEARNS) introduced the following bill; which was referred jointly to the Committees on Government Operations, Post Office and Civil Service, and the Judiciary

A BILL

To protect private individuals against reprisals for disclosing
information regarding certain governmental actions.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Private Sector Whistle-
5 blowers’ Protection Act of 1993”.

6 **SEC. 2. PURPOSE.**

7 The Federal regulatory system should be imple-
8 mented consistent with the principle that any person sub-
9 ject to Government regulation should be protected against

1 reprisal for disclosing information that the person believes
2 is indicative of—

3 (1) violation or inconsistent application of any
4 law, rule, regulation, policy, or internal standard;

5 (2) arbitrary action or other abuse of authority;

6 (3) mismanagement;

7 (4) waste or misallocation of resources;

8 (5) inconsistent, discriminatory or dispropor-
9 tionate enforcement proceedings;

10 (6) endangerment of public health or safety;

11 (7) personal favoritism; and

12 (8) coercion for partisan political purposes;

13 by any agency or its employees.

14 **SEC. 3. COVERAGE.**

15 This Act shall apply to:

16 (1) Any agency of the Federal Government as
17 defined in section 551 of title 5, United States Code.

18 (2) Any agency of a State government that ex-
19 ercises authority under Federal law, or that exer-
20 cises authority under State law establishing a pro-
21 gram approved by a Federal agency as a substitute
22 for or supplement to a program established by Fed-
23 eral law.

1 **SEC. 4. PROHIBITED REGULATORY PRACTICES.**

2 (a) For purposes of this Act, “prohibited regulatory
3 practice” means any action described in subsection (b)(i),
4 (ii), or (iii) of this section.

5 (b)(1) No employee of an Agency who has author-
6 ity—

7 (A) to take or direct other employees to take,

8 (B) to recommend, or

9 (C) to approve,

10 any regulatory action shall—

11 (i) take or fail to take, or threaten to take or
12 fail to take,

13 (ii) recommend or direct that others take or fail
14 to take, or threaten to so recommend or direct, or

15 (iii) approve the taking or failing to take, or
16 threaten to so approve,

17 such regulatory action because of any disclosure by a per-
18 son subject to the action, or by any other person, of infor-
19 mation that the person believed indicative of—

20 (I) violation or inconsistent application of any
21 law, rule, regulation, policy, or internal standard;

22 (II) arbitrary action or other abuse of author-
23 ity;

24 (III) mismanagement;

25 (IV) Waste or misallocation of resources;

1 (V) Inconsistent, discriminatory or disproportional
2 enforcement;
3 (VI) endangerment of public health or safety;
4 (VII) personal favoritism; or
5 (VIII) coercion for partisan political purposes;
6 by any agency or its employees.

7 (2) An action shall be deemed to have been taken,
8 not taken, approved, or recommended because of the disclosure
9 of information within the meaning of paragraph
10 (1) if the disclosure of information was a contributing factor
11 to the decision to take, not to take, to approve, or to
12 recommend.

13 **SEC. 5. PROHIBITED REGULATORY PRACTICE AS A DEFENSE TO AGENCY ACTION.**
14

15 (a) In any administrative or judicial action or proceeding,
16 formal or informal, by an agency to create, apply or enforce
17 any obligation, duty or liability under any law, rule or regulation
18 against any person, the person may assert as a defense that the
19 agency or one or more employees of the agency have engaged in
20 a prohibited regulatory practice with respect to the person or to a
21 related entity in connection with the action or proceeding.

23 (b) If the existence of a prohibited regulatory practice
24 is established, the person may be required to comply with
25 the obligation, duty or liability to the extent compliance

1 is required of and enforced against other persons similarly
2 situated, but no penalty, fine, damages, costs or other obli-
3 gation except compliance shall be imposed on the person.

4 **SEC. 6. ENFORCEMENT.**

5 (a) Any agency, and any employee of an agency, en-
6 gaging in a prohibited regulatory practice may be assessed
7 a civil penalty of not more than \$25,000 for each such
8 practice. In the case of a continuing prohibited regulatory
9 practice, each day that the practice continues shall be
10 deemed a separate practice.

11 (b) The President shall, by regulation, establish pro-
12 cedures providing for the administrative enforcement of
13 the requirements of subsection (a) of this section.

14 **SEC. 7. CITIZEN SUITS.**

15 (a) Any person injured or threatened by a prohibited
16 regulatory practice may commence a civil action on his
17 own behalf against any person or agency alleged to have
18 engaged in or threatened to engage in such practice.

19 (b) Any action under subsection (a) of this section
20 shall be brought in the district court for any district in
21 which the alleged prohibited regulatory practice occurred
22 or in which the alleged injury occurred. The district court
23 shall have jurisdiction, without regard to the amount in
24 controversy or the citizenship of the parties, to—

1 (1) restrain any agency or person who has en-
2 gaged or is engaging in any prohibited regulatory
3 practice;

4 (2) order the cancellation or remission of any
5 penalty, fine, damages, or other monetary assess-
6 ment that resulted from a prohibited regulatory
7 practice;

8 (3) order the rescission of any settlement that
9 resulted from a prohibited regulatory practice;

10 (4) order the issuance of any permit or license
11 that has been denied or delayed as a result of a pro-
12 hibited regulatory practice;

13 (5) order the agency and/or the employee en-
14 gaging in a prohibited regulatory practice to pay to
15 the injured person such damages as may be nec-
16 essary to compensate the person for any harm re-
17 sulting from the practice, including damages for—

18 (A) injury to, deterioration of, or destruc-
19 tion of real or personal property;

20 (B) loss of profits from idle or
21 underutilized resources, and from business for-
22 gone;

23 (C) costs incurred, including costs of com-
24 pliance where appropriate;

25 (D) loss in value of a business;

1 (E) reasonable legal, consulting and expert
2 witness fees; or

3 (F) payments to third parties;

4 (6) order the payment of punitive damages, in
5 an amount not to exceed \$25,000 for each such pro-
6 hibited regulatory practice, provided that, in the case
7 of a continuing prohibited regulatory practice, each
8 day that the practice continues shall be deemed a
9 separate practice.

10 **SEC. 8. OFFICE OF THE SPECIAL COUNSEL.**

11 (a) Any person who has reason to believe that any
12 employee of any agency has engaged in a prohibited regu-
13 latory practice may request the Special Counsel estab-
14 lished by section 1211 of title 5, United States Code, to
15 investigate.

16 (b) The Special Counsel shall have the same power
17 to investigate prohibited regulatory practices that it has
18 to investigate prohibited personnel practices pursuant to
19 section 1212 of title 5, United States Code.

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